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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MATEO LARA,

Defendant and Appellant.

F077740

(Super. Ct. No. BF167934A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael E. Dellostritto, Judge.

Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Meehan, Acting P.J., Snauffer, J., and DeSantos, J.

STATEMENT OF THE CASE

The Kern County District Attorney's Office charged appellant Mateo Lara in an information with possession for sale of methamphetamine (Health & Saf. Code, § 11378; count 1) and possession of controlled substance paraphernalia (Health & Saf. Code, § 11364; count 2, a misdemeanor). As to count 1, the prosecution also alleged possession for sale of 28.5 grams or more of methamphetamine or 57 grams or more of a substance containing methamphetamine (Pen. Code, § 1203.073, subd. (b)(2)).¹

On June 5, 2018, a jury found Lara guilty on counts 1 and 2 and found the special allegation to count 1 proven. On July 3, 2018, the court sentenced Lara to serve the middle term of two years in county jail on count 1, with the first year in custody and the second year on mandatory supervision, and to a concurrent 180-day sentence on count 2. The court awarded him 31 days of credit for actual presentence custody and 30 days of credit for good conduct in custody, and ordered payment of a \$300 restitution fund fine (§ 1202.4, subd. (b)) and a \$300 parole revocation fine (stayed) (§ 1202.45). For each count, the court ordered payment of a \$40 court security fee (§ 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$50 drug laboratory fee (Health & Saf. Code, § 11372.5, subd. (a)) with \$155 in penalty assessments, and a \$100 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)) with \$310 in penalty assessments.²

¹ Undesignated statutory references are to the Penal Code.

² The court did not describe the statutory basis for the penalty assessments orally or in the minutes. The \$155 imposed as to each \$50 drug laboratory fee implies the following orders: a \$50 state penalty assessment (§ 1464, subd. (a)(1)), a \$35 additional penalty (Gov. Code, § 76000, subd. (a)(1)), a \$10 state surcharge (§ 1465.7), a \$25 state court construction penalty (Gov. Code, § 70372), a \$10 emergency medical services assessment penalty (Gov. Code, § 76000.5), a \$5 DNA penalty (Gov. Code, § 76104.6, subd. (a)(1)) and an additional \$20 DNA penalty (Gov. Code, § 76104.7). The \$310 imposed as to each \$100 drug program fee implies orders pursuant to the same statutory authorities, with the amounts doubled.

On July 3, 2018, Lara filed a timely notice of appeal.

STATEMENT OF FACTS

A. The Prosecution Evidence

1. The Apartment Search

At about 12:00 p.m. on March 23, 2017, several Kern County Sheriff's Office deputies served a search warrant at a three-bedroom apartment on Fremont Street in Delano. Upon entry, the deputies found Jose Cidiz, Armando Sabala, and Lara's son, Marcus, near the living room area. Sabala possessed a "glass smoking pipe." In the southwest bedroom, deputies found Sylvia Zepeda and another of Lara's sons, Matthew. Deputy James Money found \$1,260 cash inside a dresser drawer and \$4,950 cash in a closet.

The door to the northwest bedroom was locked. After demanding entry and hearing no response, the deputies forced open the door and found Lara and Denise Hill. In a clothes hamper containing both male and female clothing, Deputy David Manriquez found a bag weighing 210 grams containing a substance resembling methamphetamine. In the upper shelf of a brown dresser that also held men's boxer shorts, Deputy Raymond Siebert found a digital scale that measured both grams and ounces. Siebert also found two sandwich baggies containing a substance resembling methamphetamine that weighed 2.2 grams and 1.8 grams, respectively, and multiple unused sandwich baggies.

Deputies found a second digital scale and men's deodorant on top of a clothes dresser. Deputy Dizander Guerrero found residue that resembled methamphetamine on the scale. A prescription medication bottle on the dresser bore Lara's name. In a smaller drawer of the dresser, deputies found a hairdryer and pictures of Lara and Hill. On a nightstand next to the bed, deputies found a glass pipe with residue resembling methamphetamine and a letter addressed to Lara at the residence. In a closet, deputies found men's clothing, male and female style shoes, and a purse containing a second glass pipe.

Deputy Guerrero found \$1,135 in cash on Lara's person, a sum that included 36 \$20 bills. Guerrero and California Highway Patrol Officer Brian Paxson placed the \$1,135 found on Lara and the \$1,260 and \$4,950 found in the southwest bedroom in piles in separate areas in front of the house. Paxson's dog, trained to detect the presence of controlled substances, indicated the presence of a controlled substance on each of the three piles of cash.

Kern County Regional Crime Laboratory criminalist Renee Peterson took custody of the three packages containing a substance resembling methamphetamine found in the room Lara had occupied. Peterson tested the largest package and determined that it contained a substance weighing 207 grams consisting in part of methamphetamine.

2. Deputy Guerrero's Opinion Regarding Intent to Sell

Deputy Guerrero, testifying as an expert on the use of and sales of methamphetamine, opined that outside of Los Angeles and Bakersfield, methamphetamine typically costs \$10 for one-tenth of a gram (a "dime bag"); \$20 for two-tenths of a gram (a "20"); \$30 for one gram; \$40 for 1.75 of a gram (a "teener"); \$50 to \$60 for 3.5 grams (an "eight-ball"); \$70 to \$80 for a quarter-ounce (seven grams); \$100 for a half-ounce (14 grams); \$200 to \$250 for one ounce (28 grams); \$400 to \$800 for one quarter-pound (113 grams); \$1,000 for one half-pound (227 grams); and \$1,800 to \$2,400 for one pound (454 grams). A "dime-bag" is a "usable amount" of methamphetamine. A methamphetamine user generally consumes up to two usable amounts per day, or three to five usable amounts in a week. A methamphetamine user (as opposed to a seller) generally possesses no more than an "eight-ball" at any one time.

To determine if a person possesses methamphetamine for sale, Deputy Guerrero looks for indicia of sales activity, which includes possession of methamphetamine exceeding 3.5 grams, scales, pay and owe sheets, surveillance cameras, weapons, currency, packaging materials, and packaging of the methamphetamine. "Street-level"

dealers, who generally possess up to a pound of methamphetamine, often sell methamphetamine to fund their own use of the drug.

Upon review of a hypothetical matching the facts of the case in the most relevant respects, Deputy Guerrero opined that the person described in the hypothetical had possessed methamphetamine for sales as opposed to solely for personal use, based upon the amount of methamphetamine, the scales, the sandwich baggies, the amount and denominations of the currency, and the two smaller bindles of methamphetamine. He deemed the reaction of a trained dog when it sniffed the piles of currency described in the hypothetical consistent with his opinion. The absence of weapons, pay and owe sheets or multiple cell phones did not alter his opinion.

B. The Defense Evidence

1. Lara's Source of Income

Carla Palacpac, Lara's cousin, testified that several years ago, Lara, who had owned a home, had failed to pay property taxes. To prevent foreclosure, Palacpac and her husband had paid the past-due taxes and paid for repairs to the house. After Lara sold the house in July 2013, Palacpac and Lara managed the proceeds jointly. However, Palacpac subsequently transferred the remaining money to her own account, and gave Lara money when needed for expenses. By the time of trial, Palacpac had given Lara a substantial portion of the approximately \$162,000 that she had transferred to her account.

2. Lara's Possession of a Gold Testing Kit

Lara's son Matthew testified that he had purchased a gold testing kit for his father on May 22, 2016. The kit included a bottle of testing solution with a blue cap.³

³ During closing argument, defense counsel contended the gold testing kit was a benign explanation for the presence of a scale in the Lara's room.

APPELLATE COURT REVIEW

Lara's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Lara was advised he could file his own brief with this court. By letter on February 14, 2019, we invited Lara to submit additional briefing. To date, he has not done so.

After independent review of the record,⁴ we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.

⁴ The record in this case consists of a 260-page clerk's transcript and a 595-page reporter's transcript. In addition, the court has reviewed an 18-page augmented reporter's transcript from the *Pitchess* hearing (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531), along with all of the *Pitchess* materials filed with the court on April 30, 2019, pursuant to this court's April 10, 2019 order.